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**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

**BEFORE THE STATE BAR COURT
OF THE STATE BAR OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of:

ERIKA LYNN ROMAN,
No. 216323,

A Member of the State Bar.

Case Nos. 16-O-13214,
17-O-06538, and
17-O-06926

**RESPONDENT'S RESPONSE TO
NOTICE OF DISCIPLINARY CHARGES**

TO THE STATE BAR OF CALIFORNIA OFFICE OF CHIEF TRIAL COUNSEL AND
TO ITS COUNSEL OF RECORD:

Respondent Erika Lynn Roman responds to the Notice of Disciplinary Charges through
counsel Jean Cha of Manning & Kass, Ellrod, Ramirez, Trester LLP as follows:

Denial

Respondent, Erika Lynn Roman, unequivocally denies all allegations as set forth in the
Notice of Disciplinary Charges filed on December 20, 2018. Respondent intends to prove that
these charges are unsubstantiated and cannot be shown by clear and convincing proof.
Respondent contends her conduct does not warrant discipline. Respondent strives to perform
ethically, professionally, in good faith, and with integrity at all times.

Preliminary Statement

A complaint was filed with the State Bar of California by Erika Luna [Case No. 16-O13214], a disgruntled employee, with the assistance, support and cooperation of Bradley Brownstein (Respondent's Ex-husband) and counsel Patrick DeCarolis (Bradley Brownstein's divorce attorney). The complaint was initiated and triggered by Respondent's ex-husband Mr. Brownstein and his counsel of record at the time, Mr. DeCarolis as a way to gain leverage against the Respondent in their divorce matter, and as a method to cripple Respondent from continuing to advocate for their daughter's best interests and to prevent a child support order. Throughout the divorce proceedings, Mr. Brownstein and counsel, Patrick DeCarolis, made multiple attempts to destroy Respondent's credibility and professional integrity, fortunately to no avail. Mr. Brownstein vowed that he would "warchest" Respondent and take her bar license from her, as part of a personal vendetta and resentment toward Respondent for, among other things, being a strong advocate for herself and her daughter in the family law matter. At the conclusion of the dissolution matter, on or about July 28, 2016, Mr. Brownstein admitted he was responsible for the State Bar complaint and stated he would "follow through on the Bar issues".

Erika Luna was hired as a nanny to care for Respondent and her then-husband, Mr. Brownstein's, infant daughter. During their marriage, Mr. Brownstein emailed Respondent in December of 2014 urging her to fire Ms. Luna for dishonesty but Respondent gave Ms. Luna the benefit of the doubt as she was fond of Ms. Luna. After Mr. Brownstein moved out of the home, Ms. Luna continued to work as a nanny but was later caught stealing property from Respondent in October 2015 and was subsequently fired. Ms. Luna admitted to the theft in texts and other messages and asked for her job back, having acknowledged a gambling problem. But Respondent had no choice but to refuse because the trust was broken.

Ms. Luna repeatedly threatened Respondent that she would talk to Mr. Brownstein if not hired back and did just that. Erika Luna was weaponized by Mr. Brownstein and Mr. DeCarolis and is suspected of being paid for the false statements and declarations given to and prepared by counsel Patrick DeCarolis's office in November 2015 and January 2016. Respondent intends to prove that the allegations brought in Case No. 16-O13214 are inaccurate. Ms. Luna's bar

1 complaint relies on assumptions and statements Ms. Luna offered as evidence based on
2 misrepresentations, contradictory statements, misleading information, and untruths likely designed
3 to specifically harm Respondent. The evidence will show that Ms. Luna orchestrated a fiction that
4 never took place.

5 As to the Oren Aviel [Case No. 17-O-06538] complaint, this was initiated as a means to
6 assist Mr. Aviel's counsel, David Sturman, in filing a Motion to Re-Open Mr. Aviel's case with
7 the Immigration Court. Mr. Aviel's motion, through counsel Mr. Sturman, to the court was likely
8 not substantively examined but rather granted as a matter of course based on Mr. Sturman's
9 inaccurate representations. Mr. Sturman failed to comply with *Lozada*, in part. One of the three
10 (3) procedural requirements articulated in *Lozada*, makes submitting a bar complaint compulsory.
11 Another requirement mandates that *before an attorney files this type of motion, he or she must*
12 *inform prior counsel of the allegations and give counsel the opportunity to respond. Any response*
13 *should be included with the motion.* Respondent was never notified by either Mr. Aviel or Mr.
14 Sturman of their intention to file a motion to reopen. Furthermore, Mr. Sturman cited to improper
15 law regarding deadlines. No finding of ineffective assistance of counsel by the Executive Office
16 for Immigration Review (EOIR) or any tribunal for that matter has been found. Respondent's
17 handling of Mr. Aviel's case did not constitute ineffective assistance of counsel. At all times,
18 status updates of any significant developments were provided to Mr. Aviel.

19 As to the complaint filed by Guillermo Andrade's girlfriend, Hortensia Lopez Juarez [Case
20 No. 17-O-06926] the issues have been heard and ruled upon at multiple small claims hearings and
21 the matter concluded with the court finding in favor of Respondent. Ms. Juarez is attempting to
22 use the bar as a way to relitigate what has already been decided by the court, which Respondent
23 contends amounts to res judicata. Furthermore, the court previously found that Hortensia Lopez
24 Juarez had no standing to initiate any claim on behalf of her boyfriend, Guillermo Andrade. Mr.
25 Andrade was Respondent's client and Ms. Juarez was not privy to all discussions or agreements
26 made between the parties. Respondent fulfilled her duties as designated by the retainer agreement
27 signed by Mr. Andrade. Respondent complied with all requests made by the client and acted in
28 good faith throughout the duration as counsel to Mr. Andrade. Claimants were provided with a

1 full accounting for services rendered. The court found that Mr. Andrade owed Respondent
2 additional fees which were earned by Respondent for the work that was performed in his matter.
3 Currently there is a Judgment against Mr. Andrade that has not been paid. Respondent has not
4 taken action to enforce collection of any additional fees from Mr. Andrade. At no time were
5 misrepresentations made to Mr. Andrade or Ms. Juarez.

6 **Notice of Disciplinary Charges**

7 1. Admit. Respondent admits that she was admitted to the practice of law in the State
8 of California on December 4, 2001 and has been a member of the State Bar of California since that
9 time and has over 17 years of discipline-free practice with extensive pro bono experience in
10 immigration matters.

11 **Case No. 16-O-13214**

12 **COUNT ONE**

13 2. Deny. Respondent objects to the allegations of paragraph 2 of the Notice of
14 Disciplinary Charges on the basis that they are conclusory, compound and intertwined with legal
15 conclusions.

- 16 a. Respondent denies the alleged facts and dates of the charge, which states that the
17 alleged termination occurred without the client's knowledge or that Respondent failed
18 to inform the client of the withdrawal.
- 19 b. Respondent further denies that she failed to take any action on client's behalf to
20 properly withdraw as counsel in violation of former Rules of Professional Conduct,
21 rule 3-700(A)(2).
- 22 c. Respondent alleges as follows: Client Erika Luna at all times knew Respondent
23 withdrew from the representation in the pro bono immigration matter. Ms. Luna
24 received notice of the withdrawal. Ms. Luna sought the advice of successor counsel in
25 the immigration matter. Withdrawal from representation was appropriate and for
26 cause due to the theft of personal items from Respondent's private residence which
27 included Respondent's baby gear and other personal items on or about October 22,
28 2015 and various other misrepresentations made by Ms. Luna to Respondent from

October 2014. Therefore, Respondent was no longer able to assist Ms. Luna in her immigration matter and properly withdrew in January 2016.

COUNT TWO

3. Deny. Respondent objects to the allegations of paragraph 3 of the Notice of Disciplinary Charges on the basis that they are conclusory, compound and intertwined with legal conclusions.

- a. Respondent denies that she disclosed confidential information regarding Erika Luna to USCIS in violation of Business and Professions Code, section 6068(e).
- b. Respondent alleges as follows: A communication dated February 5, 2016, which purportedly disclosed confidential information, was not drafted by Respondent and was not drafted at the direction or knowledge of Respondent. Furthermore, the information disclosed was based on a good faith belief by staff that a disclosure of certain information to USCIS was appropriate. Respondent did not sign the purported disclosure or know of its existence until the State Bar brought it to her attention. The information purportedly provided was not confidential. The information purportedly provided was available on social media, open and available to the public, and posted by Ms. Luna herself. The information was not obtained from the client during representation and caused no harm to Ms. Luna.

COUNT THREE

4. Deny. Respondent objects to the allegations of paragraph 4 of the NDC on the basis that they are conclusory, compound and intertwined with legal conclusions.

- a. Respondent denies that she failed to keep Ms. Luna reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).
- b. Respondent alleges as follows: Respondent gave Ms. Luna advanced notice of her intent to withdraw as attorney of record. Thereafter, Respondent again sent a copy of the Formal Withdrawal Notice to the last known address for Ms. Luna. This is the same address that Ms. Luna has provided to the State Bar and is her current address;

Ms. Luna admitted to receiving other documents from USCIS at this address.

COUNT FOUR

5. Deny. Respondent objects to the allegations of paragraph 5 of the NDC on the basis that they are conclusory, compound and intertwined with legal conclusions.

- a. Respondent denies that she encouraged or induced Ms. Luna to lie under oath or at any time whatsoever in relation to a pending divorce proceeding or any proceeding whatsoever, in violation of Business and Professions Code, section 6106.
- b. Respondent alleges as follows: At all times pertinent and in the history of any communications with Ms. Luna, Respondent has always asked Ms. Luna to speak honestly. Ms. Luna never signed the January 30, 2016 declaration. Ms. Luna was not terminated from a nanny position with Respondent for any other reason than because Respondent discovered from videotape surveillance footage and an eyewitness that Ms. Luna stole personal property from Respondent's private residence. Ms. Luna later returned some items and sought to get her nanny job back and presumably agreed to cooperate with Respondent's ex-husband and his counsel of record at the time to suborn perjury themselves to utilize a complaint with the State Bar for the purpose of leveraging an advantage in the pending dissolution matter. It is suspected, Ms. Luna agreed to cooperate with Respondent's ex-husband for compensation and in retaliation against Respondent when Respondent declined to hire Ms. Luna back into a nanny position.
- c. Respondent contends there is insufficient evidence to support this allegation. The Family Law court denied all of Respondent's ex-husband's motions to modify or change existing orders based on Ms. Luna's declaration as the court did not find her to have any credibility or relevance. Attorney Patrick DeCarolis presumably made misrepresentations to the bar by telling the investigator that the divorce was finalized before he secured the declaration and that the declarations were not used in the matter. The divorce went on for almost a year and a half after the declaration was submitted in connection with a request for orders. Moreover, Mr. DeCarolis provided an

1 inaccurate statement to the bar in claiming that he requested and received Ms. Luna's
2 immigration file from Respondent. Mr. DeCarolus and his associate attorneys were
3 likely ghost writing Ms. Luna's statements to the bar and are suspected of fabricating
4 many of her responses.

5 Case No. 17-O-06538

6 COUNT FIVE

7 6. Deny. Respondent objects to the allegations of paragraph 6 of the NDC on the
8 basis that they are conclusory, compound and intertwined with legal conclusions.

- 9 a. Respondent denies that she failed to perform in violation of former Rules of
10 Professional Conduct rule 3-110(A).
- 11 b. Respondent alleges as follows: In immigration matters, a motion to reopen under
12 *Lozada*, requires a State Bar complaint be filed, irrespective of whether a failure to
13 perform actually occurred. Here, Respondent did provide services of value to Oren
14 Aviel. At no time did Respondent fail to perform services for Mr. Aviel, but in fact
15 secured relief for Mr. Aviel by successfully representing him before USCIS in having
16 his marriage petition granted, completing multiple criminal matters, and preparation of
17 his motion to re-open. At no time did David Sturman, subsequent counsel for Mr.
18 Aviel comply with informing Respondent of the *Lozada* motion or provide
19 Respondent an opportunity to respond to an ineffective assistance allegation.
- 20 c. This was a complaint filed with the State Bar under *Matter of Lozada*, 19 I&N Dec.
21 637 (BIA 1988), which requires:
- 22 i. The motion must be supported by an affidavit by the respondent attesting to
23 the relevant facts. The affidavit should include a statement of the agreement
24 between the respondent and the attorney with respect to the representation.
- 25 ii. Before the respondent files the motion, he or she must inform counsel of the
26 allegations and give counsel the opportunity to respond. Any response should
27 be included with the motion.
- 28

iii. The motion should reflect whether a complaint has been filed with appropriate disciplinary authorities regarding such representation, and if not, why not.

d. Respondent contends Mr. Sturman did not comply with the requisite components to properly file a motion to reopen under *Lozada*.

COUNT SIX

7. Deny. Respondent objects to the allegations of paragraph 7 of the NDC on the basis that they are conclusory, compound and intertwined with legal conclusions.

a. Respondent denies that she failed to render an accounting former Rules of Professional Conduct rule 4-100(B)(3).

b. Respondent alleges as follows: At no time did Mr. Aviel request an accounting by his own actions or through subsequent counsel.

COUNT SEVEN

8. Deny. Respondent objects to the allegations of paragraph 8 of the NDC on the basis that they are conclusory, compound and intertwined with legal conclusions.

a. Respondent denies that she failed to communicate or respond to inquiries in violation of Business and Professions Code, section 6068(m).

b. Respondent alleges as follows: Respondent at all times pertinent has cooperated with counsel and clients in responding to requests for status or significant developments.

Case No. 17-O-06926

COUNT EIGHT

9. Deny. Respondent objects to the allegations of paragraph 9 of the NDC on the basis that they are conclusory, compound and intertwined with legal conclusions.

a. Respondent denies that she failed to perform in violation of former Rules of Professional Conduct rule 3-110(A).

b. Respondent alleges as follows: At no time was Respondent retained to perform post-conviction relief on behalf of Guillermo Andrade. Mr. Andrade hired Respondent to perform legal services in relation to a Board of Immigration Appeal. Respondent

1 contends she fulfilled her obligations as set forth in the retainer agreement.

2 **COUNT NINE**

3 10. Deny. Respondent objects to the allegations of paragraph 10 of the NDC on the
4 basis that they are conclusory, compound and intertwined with legal conclusions.

5 a. Respondent denies that she failed to render an accounting former Rules of
6 Professional Conduct rule 4-100(B)(3).

7 b. Respondent alleges as follows: An accounting was provided, and the issues were
8 resolved in a small claims court in LASC No. 17VESC00355. Judgment was issued
9 in favor of Respondent and Mr. Andrade was ordered to pay Respondent an additional
10 \$830, on or about August 18, 2017. Mr. Andrade has not paid any sum, to date.
11 Respondent has not attempted to pursue collection of the \$830. Respondent wrote-off
12 the amount owed by claimants and has no intent to try to collect.

13 **COUNT TEN**

14 11. Deny. Respondent objects to the allegations of paragraph 11 of the NDC on the
15 basis that they are conclusory, compound and intertwined with legal conclusions.

16 a. Respondent denies making any misrepresentation in violation of Business and
17 Professions Code, section 6106.

18 b. Respondent alleges as follows: At no time did Respondent make any
19 misrepresentations as to the status of the case. As a professional courtesy and for a
20 nominal fee to Mr. Andrade, Respondent, who cares deeply for her clients, attempted
21 to gauge the advisability and feasibility related to seeking a reduction of sentence for
22 felony conviction by evaluating whether the district attorney's office was amenable to
23 lowering Mr. Andrade's sentence. Based on her findings, Respondent completed the
24 evaluation and advised Mr. Andrade of his options. Mr. Andrade sought to retain
25 Respondent and enter into a separate retainer for Post-Conviction Relief as services
26 were completed.

27 c. After Mr. Andrade understood Respondent's strategy, he decided to continue to work
28 with Respondent. Through spending a great number of hours and effort on a pro bono

1 basis, Respondent determined and advised Mr. Andrade of the proper course of action
2 based on her professional opinion. To that end, Mr. Andrade desired to retain
3 Respondent to assist him in a 9th Circuit Appeal, which would require a new retainer
4 agreement. Hortensia Juarez was not Respondent's client and was not privy to all
5 conversations or agreements made with Mr. Andrade. Presumably Hortensia Juarez
6 wanted an immediate resolution and desired to seek remedies that she did not realize
7 would take Mr. Andrade outside the scope of the jurisdiction of the immigration court
8 system, which was not in Mr. Andrade's best interests. Mr. Andrade was deported by
9 taking action on his own accord well after the attorney-client relationship with
10 Respondent concluded and likely at the direction or insistence of Hortensia Juarez.
11 Mr. Andrade was deported as a result of seeking an expungement. This resulted in his
12 removal as he was no longer under the jurisdiction of the criminal court, as
13 expungements do not have the same effect for non-citizens.

14 12. Deny. Respondent objects to the allegation of making any misrepresentation from
15 intentional conduct or gross negligent conduct.

16 **COUNT ELEVEN**

17 13. Deny. Respondent objects to the allegations of paragraph 13 of the NDC on the
18 basis that they are conclusory, compound and intertwined with legal conclusions.

- 19 a. Respondent denies that she failed to communicate in violation of Business and
20 Professions Code, section 6068(m).
- 21 b. Respondent alleges as follows: At no time did Respondent fail to communicate with
22 her client Guillermo Andrade. Hortensia Juarez is not the client and is not owed a duty
23 to communicate. At all times pertinent, Respondent provided responses to all requests
24 for status from Mr. Andrade made by himself personally or through Ms. Juarez to Mr.
25 Andrade.

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FIRST AFFIRMATIVE DEFENSE

(Duplicative Charges)

Count One and Count Three are duplicative. The State Bar is simultaneously claiming in Count One that Respondent did not inform the client of her withdrawal. *See In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186, fn. 2 (identifying and eliminating charges based on "alternative theories or lesser included offenses ... avoid[s] the unnecessary expenditure of effort by the parties and the court on duplicative charges.").

Furthermore, Counts One and Three relate to the exact same underlying act, that is, that Respondent allegedly did not inform Ms. Luna that she withdrew from Ms. Luna's immigration matter and is therefore an improper duplicative charge. *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 ("[L]ittle, if any, purpose is served by duplicative allegations of misconduct."); *In the Matter of Respondent P.* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 634 (citing *Bates* in disapproving of filing duplicative charges).

SECOND AFFIRMATIVE DEFENSE

(Good Faith Reliance Upon the Law)

Respondent's conduct was done in reliance upon well-established laws and legal principles, upon which she or her staff had the legal right to rely in conducting legal affairs.

THIRD AFFIRMATIVE DEFENSE

(Lack of Materiality)

The facts on which some or all of the NDC are based allege immaterial or irrelevant omissions or statements that do not constitute willful misconduct.

FOURTH AFFIRMATIVE DEFENSE

(Charges Do Not Constitute Willful Misconduct)

The facts on which some or all of the Notice of Disciplinary Charges are based constitute mistake, inadvertence, neglect, or error and do not rise to the level of willful misconduct. *In the Matter of Chestnut* (Review Dept. 2000) 4 Cal. State Bar. Ct. Rptr. 166, 173; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

Petitioner unreasonably delayed in bringing charges, which has prejudiced Respondent's ability to respond and defend against said charges.

SIXTH AFFIRMATIVE DEFENSE

(Res Judicata)

As to accountings, the issues of fees have already been addressed and adjudicated in favor of Respondent and are improperly charged.

SEVENTH AFFIRMATIVE DEFENSE

(Ongoing Investigation)

As a separate and affirmative defense to the Complaint and each purported cause of action contained therein, Respondent alleges that she has not yet completed a thorough investigation or study or completed the discovery of all the facts and circumstances of the subject matter of the NDC and, accordingly, reserves the right to amend, modify, revise or supplement his answer and to plead such other defenses and take such other further actions as he may deem proper and necessary in his defense upon completion of said investigation and/or study.

WHEREFORE, Respondent prays that the Court find that Respondent did not commit any acts constituting professional misconduct, and that the Notice of Disciplinary Charges be dismissed in the interest of justice and costs be waived.

DATED: January 31, 2019

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: 

Jean Cha

Attorneys for Erika Lynn Roman

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1609 James M. Wood Blvd., Los Angeles, CA 90015.

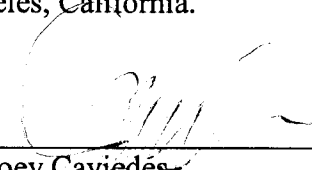
On January 31, 2019, I served true copies of the following document(s) described as **RESPONDENT'S RESPONSE TO NOTICE OF DISCIPLINARY CHARGES** on the interested parties in this action as follows:

HUGH RADIGAN, TRIAL COUNSEL
OFFICE OF THE CHIEF TRIAL COUNSEL
THE STATE BAR OF CALIFORNIA
845 SOUTH FIGUEROA ST.
LOS ANGELES, CA 90017-2515

BY PERSONAL SERVICE: I personally delivered the document(s) to the person at the addresses listed in the Service List. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2019, at Los Angeles, California.



Joey Cayiedes